terstate matters are clearly objectionable.[9] The intent of the legislature should be considered to a certain extent as to whether its primary object is a purely police regulation or a regulation of commerce.[10] A recent case held a statute requiring the marking of convict-made goods to be an unconstitutional interference with interstate commerce. *In re Opinion of the Justices*, 98 N. E. 334 (Mass.).[11] Since laws which discriminate against convict-make goods have been held an invalid exercise of the police power under the Fourteenth Amendment,[12] this holding seems unquestionable. For even although a statute may be justified by the police power as due process of law under the Fourteenth Amendment [13] it must be more clearly a necessary exercise of the police power to justify any interference with interstate commerce.[14] Subject to these various considerations the question must be asked in each individual case: Has the interference with interstate commerce been unreasonable? This question must be answered by the court on the particular state of facts presented.

APPORTIONMENT OF INSURANCE BETWEEN COMPOUND AND SPECIFIC POLICIES. — A provision frequently found in insurance policies limits the liability of the insurance company to such proportion of the loss as the amount insured by its policy shall bear to the whole insurance on the property.[1] By the weight of authority, such a clause in a policy on certain property applies where the insured holds also a compound policy covering the same and additional property.[2] The precise basis on which the proportion referred to in such a clause shall be determined is a subject of irreconcilable conflict, because of the difficulty in fixing the amount to which the property covered by the specific policy is insured by the blanket policy.[3]

Of the rules suggested for determining this amount, some apparently proceed on the theory that the underwriter is entitled to regard as insuring the property covered by the specific policy, all insurance under which recovery could be had for a loss on that property. This theory is carried to an extreme in the rule fixing the amount at the face value of the blanket policy, when there has been a loss only on the property

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Central R. Co. *v.* Illinois, 163 U. S. 142, 16 Sup. Ct. 1096; requiring railroads to furnish freight cars within certain time after notice unless a strike or public calamity prevents, Houston and Texas Central R. Co. *v.* Mayes, 201 U. S. 321, 26 Sup. Ct. 491.

[9] Welton *v.* Missouri, 91 U. S. 275; Walling *v.* Michigan, 116 U. S. 446, 6 Sup. Ct. 454.

[10] See 1 HARV. L. REV. 159.

[11] People *v.* Hawkins, 157 N. Y. 1, 51 N. E. 257.

[12] People *v.* Raynes, 136 N. Y. App. Div. 417, 120 N. Y. Supp. 1053; aff'd in 198 N. Y. 539, 622, 92 N. E. 1097.

[13] Powell *v.* Pennsylvania, 127 U. S. 678, 8 Sup. Ct. 992, 1257.

[14] Schollenberger *v.* Pennsylvania, 171 U. S. 1, 18 Sup. Ct. 757.

[1] Such a provision is clearly enforceable if the total insurance exceeds the loss. German Ins. Co. *v.* Heiduk, 30 Neb. 288, 46 N. W. 481. If the loss is greater than the whole amount of the several policies, each insurance company is liable to pay the insured the whole amount of its policy. Erb *v.* Fidelity Ins. Co., 99 Ia. 727, 69 N. W. 261. But it may be otherwise provided. Angelrodt *v.* Delaware Mutual Ins. Co., 31 Me. 593.

[2] Ogden *v.* East River Ins. Co., 50 N. Y. 388, overruling Howard Ins. Co. *v.* Scribner, 5 Hill (N. Y.) 298. *Contra*, Clarke *v.* Western Assurance Co., 146 Pa. 561, 23 Atl. 248. *Cf.* Storer *v.* Eliot Fire Ins. Co., 45 Me. 175.

[3] See 4 COOLEY, BRIEFS ON INSURANCE, 3111 *et seq.*

covered by the specific policy.[4] While this must be the rule where both policies are specific,[5] it seems difficult to support, where one policy is compound, if the face value of the blanket policy is greater than the value of the property covered by the specific policy. Accordingly it has been suggested that the sum taken should be the face value of the blanket policy up to the value of the property covered by the specific policy.[6] Where the property not covered by the specific policy also burns, it must be apparent, if the insured is to recover for that loss under the blanket policy, that the latter cannot be regarded as insuring only the property covered by the specific policy. It has, therefore, been held in such a case that the blanket policy should be taken to insure the property in question for the face value of the policy less the amount of the loss on the property covered only by the blanket policy.[7]

A rule somewhat less favorable to the insurer than those considered has been adopted in some states. It treats the blanket policy as if it originally contained a distributive clause applying the blanket amount to the different items covered by it in proportion to their values.[8] Such clauses are not uncommon in insurance policies, but its implication, it is charged, makes a new contract for the parties. On this ground a recent New Jersey case refuses to follow the rule, and adopts instead the "Gradual Reduction Rule."[9] *Grollimund* v. *Germania Fire Ins. Co.*, 83 Atl. 1108. Applicable only when at least two parts of the property covered by the blanket policy are covered also by specific policies, this rule regards the blanket policy as insuring each item to the entire amount of the policy unappropriated when the particular item is reached. The adjustment is made item by item in whatever order will work substantial justice and equity to all concerned. But it is not made clear why this rule changes the express contract of the parties any less than the preceding.

The truth would seem to be that in neither case is there a real change in the contract but merely an attempt to construe the words "whole insurance." According to the well-known rule of construction, these words should be construed most strongly against the insurer who writes the policy. The proper application of this principle, it is submitted, would result in a rule different from any of those mentioned. For, in order to construe the words most favorably to the insured, only that portion of the blanket policy should be taken as cannot be disposed of by the property not covered by the specific policy. Consequently the amount should be the difference between the face value of the blanket policy and the value of the property covered by it excluding the property covered by the specific policy.

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[4] Page *v.* Sun Ins. Office, 74 Fed. 203.

[5] Farmers' Feed Co. of New Jersey *v.* Scottish Union & National Ins. Co. of Edinburgh, 173 N. Y. 241, 65 N. E. 1105.

[6] See 23 HARV. L. REV. 227.

[7] Liverpool & London & Globe Ins. Co. *v.* Delta County Farmers' Association, 56 Tex. Civ. App. 588, 121 S. W. 599; Angelrodt *v.* Delaware Mutual Ins. Co., *supra;* Cromie *v.* Kentucky and Louisville Mutual Ins. Co., 15 B. Mon. (Ky.) 432. In practice, this rule might prevent pro-rating altogether.

[8] Blake *v.* Exchange Mutual Ins. Co., 12 Gray (Mass.) 265; Chandler *v.* Insurance Co. of North America, 70 Vt. 562, 41 Atl. 502. As a result of its application in the latter case, this is commonly called the "Vermont rule."

[9] This rule, sometimes called the "Connecticut rule," was first enunciated in Schmaelzle *v.* London & Lancashire Fire Ins. Co., 75 Conn. 397, 53 Atl. 863.